

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MAGDA EISENBERG,

Plaintiff,

-against-

NEW ENGLAND MOTOR FREIGHT, INC.&
ANDRE HEMRAJ,

Defendants.

DECLARATION

Civil Action File No.:
08CV1469

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Raphael Weitzman, an attorney duly admitted to practice in the State of New York, respectfully affirms the truth of the following statement under penalty of perjury and pursuant to Section 2106 of the CPLR;

1. I am a member of the firm of the Weitzman Law Offices, L.L.C. attorneys for the Plaintiffs herein.
2. Your deponent makes this declaration in support of a Motion pursuant to Section 50-e, subd. 5, of the General Municipal Law of the State of New York, for leave to file and serve a notice of claim for personal injury against the City of New York after the statutory period for a notice of claim to be filed pursuant to Section 50-e, subd. 1 has expired and pursuant to Rule 15 of FRCP, for leave to amend the foregoing pleading.
3. This action was brought to recover for personal injuries sustained by the Plaintiff, Magda Eisenberg.
4. Plaintiff was knocked down by Defendant New England Motor Freight Inc.'s vehicle operated by co Defendant Andre Hemraj at Second Avenue at its intersection with East 60th Street in the County, City and State of New York.
5. It has come to our attention that a witness to the foregoing incident, Anjela Mejia and others, who have not yet been identified, were traffic agents for New York City Police

Department who were present at the time of incident. Said witnesses have not been co-operative in providing statements concerning the incident. Furthermore, said witnesses may have contributed to the incident.

6. Plaintiff has sustained disabling injuries including Multiple Fractures of the Right Shoulder Requiring Open Reduction Surgery, Multiple Fractures of the Right Pelvis, Multiple Hematomas.

7. Your deponent has made an investigation of the facts and circumstances surrounding the claim and is familiar with and has examined reports and medical data concerning the injuries stated above as are now available.

6. Upon information and belief the injuries were occasioned by the negligence, omissions, and misconduct of the Defendants and the City of New York, their agents, servants, or employees in the course or scope of their employment.

7. A notice of claim against the Defendant was filed or served however after the 90-day period for filing and serving it as provided for by statute.

8. The facts and circumstances surrounding the failure to file a claim within a time period provided for by law are as follows:

The Notice of Claim was not filed as this office was not aware of the presence of the agents of New York City Police Department at the incident location and their possible contribution to the incident. We recently discovered this possible contribution and made the foregoing motion upon said discovery. We are attempting to file the Notice of Claim only 40 days past the filing deadline.

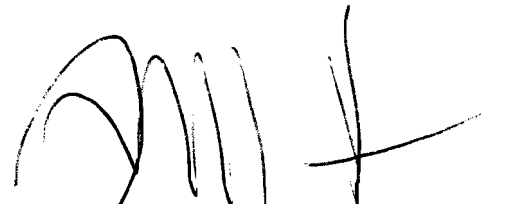
9. A copy of the claim proposed to be served and filed in connection with this proceeding is hereto annexed (Exhibit A).

10. No previous application for the relief sought has been made.

WHEREFORE, deponent respectfully requests that an order be made permitting the service of a notice of claim to be made at this time upon the Defendant as provided by the General Municipal Law, the amendment of Complaint as to adding the Defendant City of New York to be

made at this time and for such other and further relief as the court may deem just in the circumstances.

Dated: New York, New York
March 12, 2008



Raphael Weitzman
Attorney at Law